

MINUTES WAYNE COUNTY ETHICS BOARD

Meeting of Monday, August 4, 2014 – 3:00 P. M.

Hearing Room 704, Guardian Building, 500 Griswold, Detroit, MI, 48226.

A. Roll Call 3:05 P.M.

William J. Giovan (C)	- Present
William O'Neil (VC)	- Present
Sidney Bogan	- Present
Anthony S. Guerriero	- Present
Daniel Martin	- Present
William C. Schaefer	- Excused
Stella Szczesny	- Present

B. Minutes of June 23, 2014 Meeting.

Chairman Giovan indicated that the proposed minutes of the June 23, 2014 meeting be amended to include the following paragraph:

"Chairman Giovan stated that the effect of the Sheriff's request would be to say that the state statute and the ordinance prohibiting political use of a vehicle are unconstitutional as applied to the office of Sheriff; that the legislature has the constitutional right to prescribe the duties of the Sheriff; that there is no conflict between the statute and ordinance and the duties of a Sheriff, and that neither this statute nor ordinance should be construed as inapplicable to the Wayne County Sheriff."

Vice-Chair O'Neil moved to so amend the proposed minutes, seconded by member Szczesny. The motion carried unanimously.

C. New Business -Two complaints against Wayne County Prosecutor Kym Worthy for failure to file the conflict of interest personal disclosure form.

Donn Fresard, Wayne County Prosecutor's Office, stated that elected officials are excluded from filing the form and he therefore believes no violation has been committed.

Chair Giovan stated that, although he believes that there is no excuse for an elected official not to file the personal disclosure form, the failure to file the form that is mandated by section 5 of the ordinance is not listed as one of the standards of conduct prescribed in section 4 for which the board is authorized to impose a penalty, and that, accordingly, the board is without authority to sanction the Prosecutor in this instance.

Mr. Guerriero stated that he views the complaint the same way that the Board Chair does.

Mr. Bogan stated that he agrees with the Chair.

Susan Bisio, Corporation Counsel, agreed with the Chair's opinion.

Mr. Guerriero offered to recuse himself on this issue on the basis that he is the appointee on the board of the Wayne County Prosecutor. Mr. Guerriero was dissuaded from recusing himself.

Later in the meeting member, Szczesny moved to dismiss the complaints against the prosecutor, seconded by Mr. O'Neil. The motion carried

D. Complaint against Jeremy Cady for failure to file the personal disclosure form.

Ms. Bisio informed the Board there was a data entry error in the search for Mr. Cady's form and that Mr. Cady did file the 2013 – 2014 personal disclosure form. The department name used in the search field was not a name recognized by the website.

Mr. Guerrero moved to dismiss the complaint against Mr. Cady, seconded by member Szczesny. The motion carried unanimously.

E. Choice of an attorney to render an opinion on the matter raised by Sheriff Napoleon.

Chairman Giovan stated that, of the three law firms recommended approved by Corporation counsel to render a legal opinion, member William Schaefer had recommended to the chair the choice of attorney John Jacobs, a recommendation with which Chairman Giovan agreed.

Member Guerrero moved to higher Mr. Jacobs for that purpose, seconded by member Szczesny. The motion carried unanimously.

F. Proposed amendments to Rules of Procedure.

Ms. Bisio provided an overview of proposed amendments to the board's rules of procedure.

Mr. Guerriero moved and Mr. Bogan seconded that the amendments be adopted. The motion passed unanimously.

The amended rules are attached to these minutes.

G. Such other matters as may be properly submitted before the Board.

H. Public Comments.

Felicia Johnson, Commission Counsel, stated that the Ethics Ordinance revisions are being drafted.

- I. Mr. O'Neil moved and Mr. Bogan seconded that Board adjourn. The motion passed unanimously.

Adjournment: 4:17 P.M.

Respectfully submitted,
Darcel Brown
Legislative Research Assistant

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WAYNE COUNTY ETHICS BOARD COMPLAINT PROCESS

Complaints.

- (a) *Filing of complaint.* Any person may file a written, sworn and signed complaint with the Ethics Board alleging a violation of the ethics ordinance by any official, employee or contractor of the County. The complaint shall be submitted on the form provided by the County and shall contain (i) the name, address, and telephone number of the complainant; (ii) the name and position, if known, of the public servant alleged to have violated the Wayne County Ethics Ordinance (the respondent); (iii) a statement of specific facts alleging a violation of the standards of conduct prohibited in the ethics ordinance; (iv) a statement that the complainant has read the complaint, knows its contents, and believes the alleged violations to be true; and, (v) the signature of the complainant before a notary public. The Ethics Board secretary shall promptly forward all complaints to all Ethics Board members and the Ethics Board attorney.
- (b) *Criminal allegations.* In the event that the allegations in the complaint appear to be criminal in nature, the complaint and any accompanying documentation shall be immediately forwarded to the Wayne County Prosecutor by the Ethics Board Chair and no further action shall be taken by the Ethics Board. The complainant and the members of the Ethics Board shall be notified that the referral has been made.
- (c) *Notification of complainant and respondent (the alleged violator).* In all other cases where the complaint appears to be non-criminal in nature, the Ethics Board attorney shall promptly notify the complainant that the complaint has been received and shall serve a copy of the complaint on the respondent. Both the complainant and respondent shall be provided with a copy of the Wayne County Ethics Board Complaint Process at this time.
- (d) *Request for information.* The Ethics Board may request additional information from either the complainant or the respondent regarding any issues raised in the complaint at any time throughout the complaint process.
- (e) *Initial review.* Within fourteen (14) calendar days after receipt, the Ethics Board attorney shall review the complaint and all supporting documents submitted by the complainant and will advise the Ethics Board:
 - (1) Whether or not the complaint is in the proper form; and,
 - (2) Whether the complaint falls under the scope and authority of the Ethics Board.
- (f) *Answer.* The respondent, or his/her designee, shall file an answer with the Ethics Board within twenty-one (21) calendar days after service of the complaint. The answer must: (i) be in writing; (ii) include a response to each allegation raised in the complaint; and (iii) contain the signature of the respondent (and designee, if being filed by a person other than the respondent) before a notary.

- (g) *Additional written information.* The complainant and respondent may submit additional written information for the Ethics Board to consider within twenty-eight (28) calendar days after the complaint has been served. Responses to additional written information may be made within seven (7) calendar days. All additional information and responses thereto must be sent to the Ethics Board and to the opposing party at the same time.
- (h) *Witness lists.* If the complainant or respondent wish to have a witness address the Ethics Board at the hearing, the names and addresses of all witnesses must be provided to the Ethics Board and the opposing party within twenty-eight (28) days after the complaint has been served.
- (i) *Notice of hearing.* Notice of the hearing date, place, and time shall be given by the Ethics Board to the complainant, respondent, appropriate elected official, and any witness named on a witness list provided by the complainant or the respondent no fewer than ten (10) calendar days before the date of the hearing. The Ethics Board may independently request the presence of any witness or the production of any documentary material that it believes would be helpful in reaching a decision concerning the merits of any complaint.
- (j) *Conduct of hearing.* The hearing shall be conducted informally, and the court rules of evidence and civil procedure shall not apply. Witnesses shall be sworn by the presiding officer of the Ethics Board or other official authorized to administer oaths. The complainant and the respondent have a right to be represented by legal counsel obtained at personal expense. Both the complainant and the respondent shall have an opportunity to address the Ethics Board at the hearing. The Ethics Board may permit any witness to speak at the hearing, and it may request any documentary material that it determines will be helpful to reaching a decision concerning the merits of any complaint. In its discretion, the Ethics Board may continue a hearing at a later date if it determines that further testimony or documentary materials are necessary to reach a decision concerning the merits of any complaint.
- (k) *Burden of proof.* The complainant has the burden of proving the allegations by a preponderance of the evidence.
- (l) *Rights of respondent.* The respondent has the right to: (i) be present; (ii) be represented by counsel; (iii) testify; (iv) examine witnesses; (v) cross-examine adverse witnesses; and (vi) introduce other evidence as may be material and relevant to the issues.
- (m) *Decision.* The Ethics Board shall render its decision by majority vote of the quorum present at the hearing. Complaints may be dismissed if the Ethics Board determines that: (i) it lacks jurisdiction over the complainant or the subject matter; (ii) the complaint is barred because it was resolved before the complaint was filed; (iii) the face of the complaint fails to state a claim of unethical conduct; or, (iv) there is insufficient evidence to believe that the ethics ordinance was violated. If the Ethics Board determines that the ethics ordinance was violated, *then it shall direct the chairperson of the Ethics Board to issue a municipal civil infraction violation notice instructing the respondent to appear in the Wayne County Municipal Violations Ordinance Bureau to pay the fine and costs prescribed by this chapter. If an admission of responsibility is not made and the civil fine and costs are not paid, then*

the chairperson shall file a municipal civil infraction citation with the appropriate district court and shall serve a copy on the respondent.

- (n) The ethics board shall forward a copy of all findings of fact to the appropriate elected official.

Advisory opinions.

- (a) Any public servant may make a written request for advisory opinion if the public servant is in doubt whether his or her conduct complies with the requirements of the ethics ordinance.
- (b) Complaints may be made anonymously.
- (c) The Ethics Board secretary shall promptly forward all requests for an advisory opinion to all Ethics Board members and the Ethics Board attorney.
- (d) Within fourteen (14) calendar days after receipt, the Ethics Board attorney shall review the request and all supporting documents and will advise the Ethics Board:
 - (1) Whether or not the request is in the proper form; and,
 - (2) Whether the complaint falls under the scope and authority of the Board.
- (e) The Ethics Board may make such informal investigation of the facts and issues raised by the request as the Board deems advisable.
- (f) The Board shall render its opinion at an open meeting. Copies of advisory opinions shall be made part of the Ethics Board minutes.